

**Unofficial Draft Copy**

As of: October 17, 2008 (3:44pm)

LC0341

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act revising the regulation of economic credentialing of physicians; expanding economic credentialing regulations to include outpatient centers for surgical services; clarifying conflict of interest terms; removing temporary language from related statutes; removing a termination date for economic credentialing; amending sections 50-5-105, 50-5-117, and 50-5-207, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 50-5-105, MCA, is amended to read:

**"50-5-105. ~~(Temporary)~~ Discrimination prohibited.** (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified

as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6. ~~(Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)~~

~~50-5-105. (Effective July 1, 2009) Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.~~

~~(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.~~

~~—— (b) For the purposes of this subsection (2), the following definitions apply:~~

~~—— (i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.~~

~~—— (ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.~~

~~—— (3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.~~

~~—— (4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.~~

~~—— (5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."~~

*{ Internal References to 50-5-105: None. }*

**Section 2.** Section 50-5-117, MCA, is amended to read:

**"50-5-117. ~~(Temporary)~~ Economic credentialing of physicians**

**prohibited -- definitions.** (1) A Except to the extent necessary to determine physician competency or to comply with medicare or medicaid certification under Titles XVIII and XIX of the Social Security Act, respectively, or for accreditation by the joint commission on accreditation of healthcare organizations or the accreditation association for ambulatory health care, a hospital may not engage in economic credentialing by:

(a) ~~except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations,~~ requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital, outpatient center for surgical services, or to any facility related to the hospital or outpatient center for surgical services;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan or outpatient center for surgical services health plan to a physician ~~or a partner, associate, or~~

~~employee of the physician who has medical staff privileges~~  
because the physician or partner, associate, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital or outpatient center for surgical services may:

(a) refuse to appoint a physician to the governing body of the hospital board or to the position of president of the medical staff or presiding officer of a medical staff committee if conflict of interest exists or the physician or a partner or employee of the physician provides medical or health care services at, ~~has an ownership interest in,~~ or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(b) require recusal of a physician member of the board, the president of the medical staff of the hospital or outpatient center for surgical services, or presiding officer of a medical staff committee from financial decisions and information related to the hospital or outpatient center for surgical services if the physician member of the board, president of the hospital medical staff or outpatient center for surgical services staff, or presiding officer of a medical staff committee has a conflict of interest relevant to those decisions or that information.

(3) For the purposes of this section, the following definitions apply:

(a) "Board" means the governing body or board of directors of a hospital or outpatient center for surgical services.

(b) (i) "Conflict of interest" means, notwithstanding the board's own conflict of interest policy, a situation in which a physician in a leadership position either individually or through an immediate family member as defined in 15-30-602, partner, or employee of the physician has a financial interest in any health care facility that may compromise the board's fiduciary responsibility.

(ii) For the purposes of subsection (3)(b)(i), a financial interest exists if a person directly or indirectly holds through business or investment a greater than 5% ownership interest in any health care facility licensed under chapter 5, that offers similar services as a hospital licensed under chapter 5.

(c) (i) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital or outpatient center for surgical services on criteria other than the individual's education, training, current competence, experience, ability, personal character, and judgment.

(ii) This term does not mean use by the hospital or outpatient center for surgical services of:

(i)(A) exclusive contracts with physicians, if the contracts do not violate the unfair trade practices act under Title 30, chapter 14, part 2;

(ii)(B) equitable medical staff on-call requirements as determined by a supermajority of the medical staff of the

hospital or outpatient center for surgical services. The on-call requirements may not violate 30-14-103.7

~~(iii)~~(C) adherence to a formulary approved by the medical staff; or

~~(iv)~~(D) other medical staff policy adopted to manage health care costs or improve quality.

~~(b)~~(d) "Health care facility" has the meaning provided in 50-5-101 ~~and includes diagnostic facilities.~~

~~(c)~~(e) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

~~(d)~~(f) "Physician" has the meaning provided in 37-3-102.

~~(4) For the purposes of this section, the provisions of 50-5-207 do not apply. (Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)"~~

{ Internal References to 50-5-117:  
50-5-207 a }

**Section 3.** Section 50-5-207, MCA, is amended to read:

**"50-5-207. ~~(Temporary)~~ Denial, suspension, or revocation of health care facility license -- provisional license.** (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3, ~~except 50-5-117,~~ is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of

this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court.

~~(Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)~~

~~50-5-207. (Effective July 1, 2009) Denial, suspension, or revocation of health care facility license -- provisional~~

~~license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:~~

~~(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.~~

~~(b) The staff is insufficient in number or unqualified by lack of training or experience.~~

~~(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.~~

~~(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.~~

~~(e) There is cruelty or indifference affecting the welfare~~

~~of the patients or residents.~~

~~—— (f) There is misappropriation of the property or funds of a patient or resident.~~

~~—— (g) There is conversion of the property of a patient or resident without the patient's or resident's consent.~~

~~—— (h) Any provision of parts 1 through 3 is violated.~~

~~—— (2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.~~

~~—— (3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.~~

~~—— (4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court."~~

~~{ Internal References to 50-5-207:  
50-5-117 a }~~

NEW SECTION. **Section 4. Repealer.** Section 6, Chapter 351, Laws of 2007, is repealed.

NEW SECTION. **Section 5. {standard} Effective date.** [This act] is effective on passage and approval.

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